IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/07/2003

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

S.A.NO.1189 OF 2002 AND S.A.NO. 1190 OF 2002
AND
C.M.P.NOS.9840 AND 9841 OF 2002

R.S.Rajendran .. Appellant in
both appeals

-Vs-

Arayee .. Respondent in
SA.No.1189 of 2002

1. Sekkadiyan
2. Arayee .. Respondent in
SA.No.1190 of 2002

These second appeals are preferred under Section 100 of C.P.C. against the judgment and decree made in A.S.NoS.80 & 81 of 2001 dated 14.3 .2002 on the file of the learned Additional District Judge-cum-Chief Judicial Magistrate, Karur confirming the judgment and decree made in O.S.No.793 and 309 of 1997 dated 18.1.2001 on the file of the learned District Munsif, Karur.

!For Appellants : Mr.V.Jeevagiridharan

^For Respondents: No appearance (Served)

:COMMON JUDGMENT

Heard the learned counsel appearing for the appellant in both the appeals. On consideration of the submissions made and scrutiny of the materials available, this Court is of the view that no question of law much less substantial question of law is available for consideration by this Court.
2. As could be well seen from the available materials, these two appeals have arisen from the common judgment of the learned Additional District Judge-cum-Chief Judicial Magistrate, Karur made in A.S.Nos.80 and 81 of 2001, which arose from two original suits, namely, O.S.No.309 of 1997 filed by the appellant herein seeking for permanent injunction, and the other suit in O.S.No.793 of 1997 filed by the respondent in SA.No.1189 of 2002 for declaration and permanent injunction. The respondent in her suit in OS No.793 of 1997 came with a specific case stating that the suit vacant site, more

fully described in the schedule of property, was a part of Vaik kal Poramboke in T.S.No.63 of Karur village and it belonged to the State; that the plaintiff encroached the suit vacant site in or about 1991 and put up a thatched shed thereon at her own costs; that 'B' memo notices were issued to her; that she has been paying penal assessment to the State all along; and that the appellant herein/defendant, who was permitted to be in part of the property, refused to vacate the suit property. Under the stated circumstances, there arose a necessity to file the suit.

3. Contrary to the above averments put forth by the plaintiff in OS No.793 of 1997, the appellant herein has filed a suit in O.S.No.309 of 1997, wherein he sought for a relief of permanent injunction stating that he encroached upon the suit property in the year 1982 itself; that he put up a thatched shed thereon; that he has been living there continuously, and hence his possession was lawful and was to be protected. Both sides were given sufficient opportunity by the trial court for adducing evidence both oral and documentary. The trial court, agreeing with the case of the respondents, decreed the suit in O.S.No.793 of 1997 filed by the respondent herein, while dismissed the suit in O.S.No.309 of 1997 filed by the appellant herein. Aggrieved appellant preferred the above appeals in AS Nos.80 and 81 of 2001, which were enquired by the learned Additional District Judge-cum-Chief Judicial Magistrate, Karur and on enquiry, the lower appellate court confirmed the judgment of the trial court and dismissed both the appeals. Aggrieved over the same, the appellant has brought forth these two second appeals.

4. As pointed out above, this Court is unable to notice any substance in these appeals, and hence, it has to reject both the appeals at this stage.

5. Admittedly, the property in both the suits, namely OS Nos.793 of 1997 and 309 of 1997, is same. The specific case of the respondents was that the property belonged to the Government and it was Vaikkal Poramboke. She encroached the property in the year 1991 and she put up a thatched shed. 'B' memos were issued to her and she has been paying penal assessment to the Government. In order to prove the same, she filed number of documents before the trial court. But, the appellant herein, who came with a case stating that he encroached the property in the year 1982 itself, has not produced any iota of evidence or materials before the trial court that he was in possession of the suit property and that he has paid tax or Cess to the Government. But, what was contended before the lower court and equally here also is that he was in lawful possession without any basis whatsoever. In view of the documentary evidence adduced by the respondent before the trial court, the trial court accepted the case of the respondent/plaintiff in OS No.793 of 1997 and the same was confirmed by the first appellate court. Both the courts below have given a concurrent finding that the respondent before this Court was in possession of the property by paying tax and Cess to the Government. Both the courts below were perfectly correct in accepting the case of the respondents herein. The appellant before this Court, without any iota of evidence, has come with a false plea that he was in lawful possession, and hence, it was to be protected. This Court is unable to see anything to interfere in the concurrent finding of the courts below and also this Court is unable to notice any question of law much less substantial question of law to be formulated for consideration by this Court, and hence, both the appeals have got to be dismissed.

6. In the result, both the second appeals are dismissed. No costs.

Consequently, connected CMPs are also dismissed.

Index : Yes
Internet : Yes
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To
1. The District Munsif, Karur
2. The Additional District Judge-cum-
Chief Judicial Magistrate, Karur

3. The Record Keeper, VR Section
High Court, Madras